Dear Convener,

CHILDREN (EQUAL PROTECTION FROM ASSAULT) (SCOTLAND) BILL: STAGE 1 REPORT

1. This letter provides a Scottish Government response to points raised in the Committee’s report. I have put the points raised by the Committee in bold and the Scottish Government’s response to those points below. The Scottish Government is grateful to the Committee for its scrutiny of the Bill, looks forward to the Stage 1 debate and welcomes that the Committee has recommended the general principles of the Bill be approved.

Restraint

68. We note the difference between the restraint used to keep a child from running into the road, or from reaching for a pan of boiling water, and the restraint described by Who Cares? Scotland and Amy-Beth Miah. Restraint in care settings is an area we believe requires much wider scrutiny, although we do not think that this Bill is the vehicle for that scrutiny.

69. We welcome the Minister’s commitment to further discuss issues around restraint. We note the Scottish Government is planning to review the Mental Health (Care and Treatment) (Scotland) Act 2003 and is currently reviewing the Adults with Incapacity (Scotland) Act 2000. We ask the Scottish Government to look at the issue of restraint in care and education settings, and to take account of restraint when it undertakes its legislative reviews, with a view to ensuring the human rights of vulnerable individuals are paramount in any guidance, procedure and legislation. We seek an explanation of how the Scottish Government intends to take forward this work, including relevant timescales.
70. We also intend to look at the issue of restraint further when our work programme allows.

2. The Scottish Government agrees with the Committee that this Bill is not the vehicle to scrutinise issues in relation to restraint.

3. However, we acknowledge the Committee’s concerns in this area, and agree that restraint is a significant issue. We are committed to ensuring the safety and wellbeing of Scotland’s children and young people.

Mental Health (Care and Treatment) (Scotland) Act 2003 and Adults with Incapacity (Scotland) Act 2000

4. The Committee asks about the planned review of the Mental Health (Care and Treatment) (Scotland) Act 2003 and the Adults with Incapacity (Scotland) Act 2000.

5. Our independent review of the Mental Health Act will link closely to existing work considering the Adults with Incapacity legislation. The principal aim of the review of the Mental Health Act is to improve the rights and protections of persons with a mental disorder and remove barriers to those caring for their health and welfare.

6. The review will therefore examine developments in mental health law and practice on compulsory detention and on care and treatment since the current legislation came into force in 2005. We expect it to make recommendations that gives effect to the rights, will and preferences of the individual by ensuring that mental health, incapacity and adult support and protection legislation reflects people’s social, economic and cultural rights including UNCRPD and ECHR requirements. It will also consider the need for the convergence of incapacity, mental health and adult support and protection legislation.

7. Taken together with the on-going work on capacity and adult support and protection legislation, we have a comprehensive programme of activity amounting to an overarching review of the legislative framework affecting people with a mental disorder.

8. A review group will also make recommendations that reflect people’s social, economic and cultural rights and will consider the future shape of incapacity, mental health and adult support and protection legislation. This follows on from work already underway to review incapacity law and practice, and a review of learning disability and autism.

9. John Scott QC will chair that review. The Scottish Ministers will not impose a timeline on the group for their work; rather, the chair will determine the length of time needed to complete a comprehensive review.

10. Ministers have also been very clear from the outset that this review should be participative and representative. In particular, the views of patients, those with lived experience and those that care for them must be central to the work being taken forward. Therefore, it will be important for the review to consider how to ensure its work is open and transparent. This will help people to see, understand and participate in the work of the review.
Restraint in residential care

11. In relation to restraint in residential care settings, including secure care, the Scottish Government guidance *Holding Safely*, published in 2005 and amended in 2013\(^1\), outlines the parameters for physically restraining a child. The guidance also encourages all residential and secure care services to develop clear plans for reducing the use of physical restraint.

12. Physical punishment is already prohibited in children’s residential care settings, as paragraph 63 of the Report mentions.

13. We are aware that children and young people who have may have suffered trauma or abuse can sometimes display challenging behaviour that puts themselves or others at risk. Temporary restraint or exclusion can sometimes be used, but only for the purposes of containment or de-escalation.

14. Children or young people in residential care will only be physically restrained by trained care staff who have undergone training in the use of safe restraint. Restraint is only used in limited circumstances:

- When the person is behaving in an unsafe or dangerous way;
- When there is a serious risk of harm to themselves or another person; and
- When there is no other effective way of keeping the young person or others safe.

15. The wellbeing and safety of children and young people is always the paramount principle when restraining any child or young person. If it is necessary to physically restrain a young person they will only be restrained for the shortest time possible, using as little force as necessary to keep them and others safe. Staff must act lawfully, and staff restraining a child must be appropriately trained, and have the required skills and judgement.

16. After any physical restraint and when the young person is ready, care staff will speak to the young person about the reason for the restraint. Taking into account the young person’s views, staff will seek to improve their understanding of what happened with a view to minimising the need to use restraint in the future.

17. Staff will ask the young person how they are feeling, and if necessary the young person will be seen by a nurse. Full written details of the incident including the young person’s comments will be recorded by the unit and copied in to the young person’s care plan. The young person will receive help to contact an advocacy worker (e.g. a children’s rights officer or Who Cares? Scotland worker) or to make a complaint, if they wish.

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\(^1\) [https://www2.gov.scot/Topics/People/Young-People/protecting/lac/residentialcare/Publications/MPRRCC](https://www2.gov.scot/Topics/People/Young-People/protecting/lac/residentialcare/Publications/MPRRCC)

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[www.gov.scot](http://www.gov.scot)
18. The Care Inspectorate, the independent scrutiny and improvement body for care services in Scotland, inspect children’s residential care homes at least once each year. Restraint procedures are part of that inspection process. The Care Inspectorate collects information on all incidents of when a child is restrained. It reviews selected cases to ensure that staff carrying out restraint are fully trained and best practices are being followed.

19. The Scottish Government will continue to monitor procedures and practice in this area given its importance.

Restraint in education

20. The use of physical intervention and seclusion of children and young people within schools is a major issue for the Scottish Government. We are committed to ensuring the safety and wellbeing of Scotland’s children and young people. Each local authority is responsible for the care, safety and welfare of pupils in school. Physical intervention and seclusion are only ever to be a last resort, used only when this will ensure the safety of the child as part of a de-escalation approach, and never for disciplinary purposes.

21. In May 2017 the Deputy First Minister committed to reviewing the implementation of the guidance contained within Included, Engaged and Involved Part 2 within 2 years. Scottish Government officials have undertaken a range of engagement with all education authorities to explore their approaches to physical intervention and seclusion in light of the guidance.

22. In line with that approach, the Scottish Government carefully considered the recommendations in the 2018 report by the Children and Young People’s Commissioner “No Safe Place: Restraint and Seclusion in Scotland's Schools”2.

23. The Deputy First Minister has issued an interim response to the Children and Young People’s Commissioner3. That response explains that the Scottish Government’s current guidance seeks to protect children and young people’s rights, including their right to education, by placing the use of physical intervention, seclusion and exclusion as measures of last resort, viewed in the wider context of early intervention, de-escalation approaches and the development of positive relationships and behaviour within our schools.

24. The response also explained that the Scottish Government will issue a qualitative report summarising engagement between Scottish Government and Education Scotland officials, in collaboration with COSLA and ADES, and all 32 local authorities. The report will draw out actions which will ensure that national policy and guidance is reflected consistently and accurately in local practice. Our findings from these discussions, along with the Commissioner’s recommendations, will identify any areas in which we can work with partners to strengthen our guidance and its implementation.

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2 https://www.cypcs.org.uk/ufiles/No-Safe-Place.pdf

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Equality Groups

198. While we agree that this Bill will be a helpful step in improving the lives of all children in Scotland, for this Bill to be a success, extra, targeted support must be available to all parents and families. This support should be developed in partnership with those working in the field, to ensure the diverse needs of communities are reflected.

199. Evidence from Alison Davis, Saheliya, highlighted the challenges of ensuring that, if passed, this Bill is understood, implemented, and supported throughout Scotland. We note her suggestion of culturally aware, trauma informed support for the communities with which she works. For many minority groups in Scotland, we do not consider that simply using existing channels to raise awareness will be sufficient.

200. We also consider there is more to be done to ensure sufficient support for the families of children with additional support needs. We ask the Scottish Government to bring this to the attention of the implementation group charged with considering awareness raising of the Bill. We ask for an outline of how they plan to address this, and the other concerns raised by equality groups.

25. The Scottish Government will draw the Committee’s comments to the attention of the Implementation Group.

26. In terms of taking these issues forward:

- The Scottish Government will include equality issues on the agenda for the next meeting of the Implementation Group.
- The Scottish Government will consider what reference should be made to equality issues in any guidance it issues (e.g. to social work departments) on Equal Protection if the Bill is enacted by Parliament.
- The Scottish Government will also consider equality issues when carrying out awareness raising work, if the Bill is enacted by Parliament.
- The Scottish Government will engage with representatives of families of children with additional support needs, and discuss with them what support may be needed in this area if the Bill should be enacted.
- If the Bill is enacted by Parliament, the Scottish Government will consider if it should prepare and publish Impact Assessments, particularly an Equality Impact Assessment, on the implementation work. This would build on the work carried out by the Member in Charge when preparing the Bill.

Awareness raising

216. We ask the Scottish Government to provide us with their current routes for communicating with parents, and their consideration of what guidance is needed for each. We also ask for an outline of how they plan to reach families who are not currently involved in any services, and where support will be made available to them.
27. The Scottish Government has a range of communication channels with parents and families, including websites aimed directly at providing information and advice to parents on key aspects of parenting, such as the Parent Club website4.

28. This website provides advice and tips from parents, backed by professionals and experts. The advice spans a wide range of topics which parents have indicated they would like support with such as sleep, healthy eating and managing children’s behaviour.

29. The Parent Club resource is promoted through a number of channels, including through Scotland’s Baby Boxes, which are now reaching 96% of expectant mothers. Parent Club has other channels such as regular emails and social media, which provide additional opportunities to engage with messaging. These channels would be utilised to offer effective and positive parenting advice. If passed, content relating to Mr Finnie’s Bill would be made available via Parent Club (and its related channels) and via mygov.scot5.

30. Building on the commitments in our National Parenting Strategy (2012)6, the Scottish Government has taken forward a number of key policy developments to support parents and families. This includes investment in perinatal and infant mental health; expanding the Family Nurse Partnership; increasing the health visitor workforce; and contacts for all families and support for families as part of the Early Learning and Childcare (ELC) expansion. The focus of the investment in universal services is to increase the sector’s capacity to build stronger relationships with families and promote positive parenting as part of wider engagement.

31. To support this work, the Scottish Government works in partnership with a range of key stakeholders (such as NHS Health Scotland) to produce universal resources and materials for parents and families. These include Ready Steady Baby7 and Ready Steady Toddler8. These resources offer consistent, quality assured advice to parents, aligned to the age and stage of the child. We will continue working with our key stakeholders to ensure that any new information about changes to the law is embedded in existing mechanisms for engaging with families.

32. The Scottish Government also works in partnership with key stakeholders in the third sector which provide support to parents and families, including those who may face additional challenges in accessing services. In the last financial year alone, we spent nearly £5 million on a wide range of support to parents and families across Scotland through the Children, Young People and Families Early Intervention & Adult Learning and Empowering Communities Fund (CYPFEIF/ALEC) and over £2 million on continuing funding national programmes supporting children and families such as Play Talk Read and Book Bug.

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4 https://www.parentclub.scot/
5 https://www.mygov.scot/
7 https://www.nhsinform.scot/ready-steady-baby
8 http://www.readysteadytoddler.org.uk/

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33. Our aim would be to raise awareness of any changes to the law (should the Bill pass) and credible alternatives to physical punishment by providing content to existing channels such as the Parent Club website, sending information to key partners and stakeholders and using other existing channels and partners to provide information to parents. We would also focus on improving the skills and knowledge of practitioners and professionals working with families. This multi-stranded approach will ensure consistent messaging across all services.

34. We will continue exploring with the Implementation Group and our third sector partners the most effective ways of raising awareness with parents and families, including those that may not be currently involved in any services.

35. We also propose to work with faith and belief groups, in line with the comment from the Rev. Peter Nimmo from the Church of Scotland recorded in paragraph 213 of the Report that “Faith communities would have a role to play” in raising awareness.

Preventative spend

240. We note that while Police Scotland and Social Work Scotland agree the impact on their current processes will be minimal, there is the potential for increased resource requirements. We also note the concerns of health services that parental support will require an increase in funds.

241. We appreciate that the Member in Charge of a Bill has provided an estimate of the costs likely to be incurred by the Bill. This is a difficult task given the lack of information in the public domain on the likely number of reports to police and the number of prosecutions and we note the divergence on costs for public awareness raising. As such, we ask the Scottish Government’s implementation group for the Bill to investigate the potential cost implications the Bill could have on the police, social work, health boards and third sector organisations that provide parenting support.

242. According to the Financial Memorandum, we note the Bill is unlikely to require a Financial Resolution. It would be helpful if further costing work could be completed in advance of Stage 2 to inform the Parliamentary authorities.

36. In the particular circumstances of this Bill, the Scottish Government will seek views from members of the Implementation Group on the costs the Bill could have. We will write to the Committee with further information in advance of Stage 2.

Potential financial implications

270. On the financial implications of the Bill, we ask the Scottish Government to reflect, in partnership with the principal bodies responsible for implementation of the Bill, on costings. We note the requests for tailored support from organisations like Saheliya, Scottish ADHD Coalition and Scottish Autism, who asked for this support to be available in multiple formats. We have asked the Scottish Government to bring this to the attention of the implementation group charged with considering implementation and awareness raising of the Bill.
37. As indicated above, in the particular circumstances of this Bill the Scottish Government will seek views from members of the Implementation Group on the costs the Bill could have. We will write to the Committee with further information in advance of Stage 2.

38. We will also draw to the attention of the implementation group points made by organisations like Saheliya, Scottish ADHD Coalition and Scottish Autism on support and will consider these points further in the group.

MAREE TODD